

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

OCT 16 2000

DAVID J. MALAND, CLERK

BY
DEPUTY

Plaintiff,

v.

Defendants and Third-Party Plaintiffs,

 V_1

Third-Party Defendants.

CIVIL ACTION NO. 6:00-CV442-WMS

Third-Party Defendant General American Life Insurance Company (“General American”) submits this first amended answer and counterclaim to the Defendants' First Amended Third-Party Complaint and states:

ANSWER

1. With respect to the allegations in Section I (paragraphs 1 through 57), admits, on information and belief, that Defendants/Third-Party Plaintiffs are Texas corporations;

102

has, for purposes of this action only, voluntarily entered its appearance; and states that it lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations and therefore denies them.

2. With respect to the allegations in Section II (paragraph 58 including subparts A-D), states that Plaintiff's Original Petition speaks for itself; states that it is without sufficient knowledge or information to form a belief as to whether any of Plaintiff's allegations are true; states that Defendants/Third-Party Plaintiffs' Original Answer speaks for itself; but states that the allegations are so vague and ambiguous that General American lacks sufficient knowledge or information to form a belief as to their truth.

3. States that the allegations in Section III (paragraph 59) are so vague and ambiguous that General American lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies them; but states, on information and belief, that many of these claims likely relate to employee welfare benefit plans.

4. States that the allegations in Section IV (paragraph 60) are so vague and ambiguous that General American lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies them.

5. States that the allegations in Section V (paragraph 61) are so vague and ambiguous that General American lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies them.

6. With respect to the allegations in paragraph 62, denies that Third-Party Plaintiffs are entitled to any relief requested in their prayer.

7. Denies all allegations not specifically admitted.

8. To the extent Third-Party Plaintiffs' claims relate to employee welfare benefit plans, their state law claims are preempted by ERISA.

COUNTERCLAIM

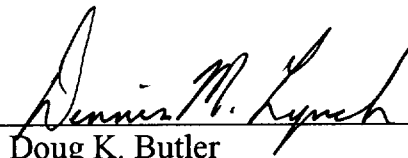
9. To the extent any of the Third-Party Plaintiffs' claims relate to an employee welfare benefit plan, General American seeks to recover from Third-Party Plaintiffs all of its reasonable and necessary attorney's fees and court costs pursuant to 29 U.S.C. § 1132(g).

PRAYER

10. General American respectfully requests the following relief:

- (a) that Third-Party Plaintiffs take nothing on their claim against General American;
- (b) that General American be dismissed with its attorney's fees and costs of court;
- (c) that General American have all such other and further relief, both general and special, at law and in equity, to which it may show itself justly entitled.

Respectfully submitted,

By: 
for Doug K. Butler
State Bar No. 03516050
Attorney-in-Charge

OF COUNSEL:

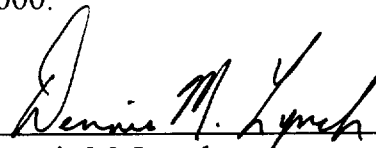
Dennis M. Lynch
State Bar No. 90001506

FIGARI DAVENPORT & GRAVES, L.L.P.
4800 Bank of America Plaza
901 Main Street, LB 125
Dallas, Texas 75202-3796
(214) 939-2000
(214) 939-2090 (facsimile)

ATTORNEYS FOR THIRD-PARTY
DEFENDANT GENERAL AMERICAN LIFE
INSURANCE COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was served via certified mail, return receipt requested, to counsel for Plaintiff and counsel for Defendants, and via regular U.S. Mail to Third-Party Defendants, all of whom are listed on the attached Service List, on this 13th day of October, 2000.


Dennis M. Lynch

SERVICE LIST

D. Brent Lemon
Shaw & Lemon
2723 Fairmount
Dallas, Texas 75201

Charles A. Clark
Clark Lea Rutter & Logson
604 Woldert
Tyler, Texas 75702

Michael E. Jones
Jay Green
E. Glenn Thames, Jr.
Potter Minton Roberts Davis & Jones
P.O.Box 359
Tyler, Texas 75710

Demitri Zgourides
John B. Shely
Andrews & Kurth, L.L.P.
600 Travis Street
STE 4200
Houston, Texas 77002

Babette Ceccotti
Cohen Weiss & Simon
330 W. 42nd Street
New York, New York 10036-6926

Peter Roan
Konowiecki & Rank
633 West Fifth Street
STE 3500
Los Angeles, California 90071-2007

Robert A. Bragalone
Cooper & Scully, P.C.
900 Jackson Street
STE 100/Founders Square
Dallas, Texas 75202

Judith Schening Apperson
Fulbright & Jaworski, L.L.P.
2200 Ross Avenue
STE 2800
Dallas, Texas 75201-2784

Douglas D. Haloftis
Lara Simonian Jitlal
Gardere & Wynne, L.L.P.
1601 Elm Street
3000 Thanksgiving Tower
Dallas, Texas 75201

Joseph Russo
Scott Daniel
Greer Herz & Adams, L.L.P.
18th Floor
One Moody Plaza
Galveston, Texas 77550-7998

Robert L. Harris
The Law Offices of Robert L. Harris
1919 S. Shiloh
STE 200/First State Bank of Texas
Lock Box 25
Garland, Texas 75040

James L. Johnson
The Johnson Law Firm
6500 Greenville Avenue
STE 345, LB 30
Dallas, Texas 75206

Phillip Stano
Jorden Burt Boros Cicchetti
Bverenson & Johnson, L.L.P.
1025 Thomas Jefferson Street, N.W.
STE 400 E
Washington, D.C. 20007

Chuck Kreutz
Buddy Steele
Locke Liddell & Sapp, L.L.P.
100 Congress Avenue
STE 300
Austin, Texas 78701-4042

Michael H. Collins
David G. Cabrales
Locke Liddell & Sapp, L.L.P.
2200 Ross Avenue
STE 2200
Dallas, Texas 75201-6776

George C. Haratsis
McDonald Sanders, P.C.
777 Main Street
STE 1300
Fort Worth, Texas 76102-5305

William S. Hommel, Jr.
McGee Hommel & Starr, P.C.
3304 S. Broadway
STE 202/Oak Plaza Office Park
Tyler, Texas 75701

David Martin
Malesovas Martin & Tekell, L.L.P.
425 Austin Avenue
10th Floor
P.O.Box 1709
Waco TX 76703-1709

James L. Jackson, Jr.
Law Offices of Pat O'Neill
110 West 7th Street
STE 1100
Fort Worth, Texas 76102

John W. Ferguson, Jr.
Tracy Crawford
Michael T. Crawford
Paul Gilliam
Ramey & Flock, P.C.
500 First Place
P.O. Box 629
Tyler, Tx. 75710

Wayne B. Mason
Richard L. Smith, Jr.
William Lance Lewis
Strasburger & Price, L.L.P.
901 Main Street, STE 4300
Dallas, Texas 75202

James A. McCorquodale
Vial Hamilton Koch & Knox, L.L.P.
1717 Main Street
STE 4400
Dallas, Texas 75201-7388

Russell Yager
Vinson & Elkins, L.L.P.
2001 Ross Avenue
3700 Trammell Crow Center
Dallas, Texas 75201-2975

E. Stratton Horres, Jr.
Steven R. Shaver
Wade A. Forsman
Wilson Elser Moskowitz Edelman &
Dicker, L.L.P.
1201 Elm Street
5000 Renaissance Tower
Dallas, Texas 75270

Jeffrey A. Davis
McGinnis Lochridge & Kilgore
1221 McKinney Street
3200 One Houston Center
Houston, Texas 77010-2009